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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

JENNIFER L. WOWK,
a/k/a JWOW CATERING,

Debtor.

Chapter 13

Case No.: 19-35612(cgm)

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**NOTICE OF MOTION FOR AN ORDER AUTHORIZING DEBTORS' SALE OF
DEBTORS' REAL PROPERTY PURSUANT TO 11 U.S.C. §363(b)(1) WITH POINTS OF
LAW**

S I R S :

PLEASE TAKE NOTICE, that upon the annexed motion of Debtor JENNIFER
WOWK, (the "debtor"), by her attorneys, Richard Scott Zirt, Esq., dated September 8, 2022,
2022, the undersigned will move before United States Bankruptcy Court, Southern District of
New York, located at 355 Main Street, Poughkeepsie, New York, 12601, via Videoconference,
on **November 15, 2022 at 9:00a.m.**, or as soon thereafter as counsel can be heard, for an Order:

a: Authorizing the debtor to sell her right, title, and interest in and to the real property
located at 35 Meyer Road, Livingston Manor, Sullivan County, NY 12758 (SBL 7.-1-38.10), and

b: Authorizing Special Counsel Martin S. Miller, Esq. to pay his legal fee, as special
counsel for the estate, from the proceeds of the closing, in the sum of \$2,800.00; and

c: Authorizing Special Counsel Martin S. Miller, Esq. to pay to Cornerstone Properties of
LL, as Special Counsel for the estate, the sum of \$21,000.00 from the proceeds of closing, as and
for Special Counsel Broker's fees in marketing and obtaining a buyer for the property; and

d: For such other and further relief which the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion must be in writing, filed with the Bankruptcy Court, with a copy to the Chambers of the Honorable Cecelia G. Morris, and served upon Richard Scott Zirt, Esq., so as to be received by the undersigned and filed with the Court at least three (3) business days prior to the aforementioned hearing date.

Dated: Monticello, New York
October 19, 2022

LAW OFFICE OF RICHARD SCOTT ZIRT
Attorney for the Debtor

By: /s/ Richard Scott Zirt, Esq.
Law Offices Of Richard Scott Zirt
7 St. John Street - Suite 101
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TO:

Office of the US Trustee
11A Clinton Avenue
Room 630
Albany, NY 12207

Krista Preuss, Trustee
399 Knollwood Road, Suite 102
White Plains, NY 10603

ALL CREDITORS AND PARTIES IN INTEREST

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

JENNIFER L. WOWK,
d/b/a JWOW CATERING,

Debtor.

Chapter 13

Case No.: 19-35612(cgm)

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**AFFIRMATION IN SUPPORT OF MOTION FOR AN ORDER
AUTHORIZING DEBTORS' SALE OF HOME
PURSUANT TO 11 U.S.C. §363(b)(1) WITH POINTS OF LAW**

**TO THE HONORABLE CECELIA G. MORRIS,
U. S. BANKRUPTCY JUDGE:**

The motion of the Debtor, Jennifer L. Wowk (the "Debtor"), by her attorney, Richard Scott Zirt, Esq. respectfully represents as follows:

1. On September 26, 2014, the Debtor filed a petition under Chapter 13 of the United States Bankruptcy Code.
2. The bankruptcy petition and schedules indicate that, at the time of the filing, the Debtor resides at and owns a residence located at 31 Meyer Road, Livingston Manor, Sullivan County, NY 12758.
2. Said residence was and is encumbered by a first mortgage, now held by Rushmore Loan Management Services, LLC as servicer for U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 BKM-TT, in the approximate mortgage amount of \$190,058.06 at the time of the filing of the bankruptcy. Said mortgage was in arrears at the time of filing which arrears are being repaid through the confirmed Chapter 13 plan.
3. The value of the residence at the time of filing was appraised to be ONE HUNDRED SIXTY THOUSAND and XX/100 (\$160,000.00) DOLLARS.
4. Due to the tremendous and unforeseen appreciation in value of the residence caused by the mass exodus from the NY Metropolitan area since the onset of the COVID-19 pandemic, the Debtor has decided to sell her interest in the home in an effort to lower her monthly

living expenses and to capitalize on this substantial and unprecedented COVID-19 increase in Sullivan County home values while it lasts.

5. On or about October 5, 2022, the debtor entered into an Agreement with CATSKILL RETREATS, LLC of 386 Putnam Avenue, Brooklyn, NY 11216 (the "Buyers") to sell her residence for a purchase price of for the sum of FIVE HUNDRED TWENTY-FIVE THOUSAND AND XX/100 (\$525,000.00) Dollars. Annexed hereto as **Exhibit "A"** is a copy of the Contract Of Sale.

The down-payment upon the contract has already been received by Special Counsel from the buyer's attorney. The broker's retention agreement provides for a 4% commission off the \$525,000.00 sales price, or TWENTY-ONE THOUSAND AND XX/100 (\$21,000.00) DOLLARS, which should be authorized to be paid to the broker upon the closing of this matter from the proceeds of the closing. Annexed hereto as Exhibit "B" is a copy of the broker's bill for services rendered.

6. Martin S. Miller, Esq. has already been approved by this Court to serve as the Special Counsel attorney for the Debtors in connection with this sale. Cornerstone Properties of LI has already been approved by this Court to serve as the Real Estate Broker for the Bankruptcy estate. Special Counsel Martin S. Miller will be charging a flat fee of TWO THOUSAND EIGHT HUNDRED AND XX/100 (\$2,800.00) DOLLARS for the legal representation of the debtor with respect to this real estate closing, and should be authorized to be paid his fee upon the closing of this matter from the proceeds of the closing, along with any reasonable expenses of the closing. Annexed hereto as **Exhibit "C"** is a copy of the bill from Martin S. Miller's office for the attorney's fees for the closing.
7. Cornerstone Properties of LI is the BR Court approved Special Counsel Real Estate Broker for the Estate. Cornerstone Properties of LI is being compensated based upon a flat fee percentage of gross sale amount, which should be authorized to be paid upon the closing of this matter from the proceeds of the closing. Annexed hereto as **Exhibit "B"** is a copy of the bill from Cornerstone Properties of LI for the Real Estate Broker's fees for the closing.
7. The contract of sale is headed towards closing and is expected to close sometime in mid-November.
8. The Debtor does not require the residence for an effective reorganization and thus desires to sell the same due to the high mortgage payments, being unable to reorganize the mortgage and the arrears upon the mortgage. This sale would relieve the Debtor of the future obligation to pay mortgage payments, as well as substantially, if not fully pay off her Chapter 13 obligations.
9. The current Chapter 13 plan proposes to pay a significantly lower percentage to the unsecured creditors. Subsequent to the proposed sale of the home, the Debtor's newly Amended Chapter 13 Plan will pay a significantly increased percentage to the unsecured

creditors as a result of the proceeds from this sale, and may possibly pay off the bankruptcy at 100% to the unsecured creditors.

10. The Debtor now makes this Motion for an Order from this Court authorizing her to sell her right, title, and interest in and to the real property located at 31 Meyer Road, Livingston Manor, Sullivan County, NY 12758.

ARGUMENT

THE DEBTOR HAS EXERCISED GOOD BUSINESS JUDGMENT IN SELLING HER PROPERTY

Pursuant to Section 363(b)(1), the Debtor may sell property of the bankruptcy estate “not in the ordinary course of business” if the Debtor demonstrates that they have employed good business judgment and the sale of estate property is beneficial to the estate and its creditors. Section 363(b) of the Bankruptcy Code provides:

(b) (1) The trustee, after notice and a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate 11 U.S.C. 363(b)(1).

In the Second Circuit, a Court addressing the issue of whether a sale out of the ordinary course of business should be approved must apply the following standard:

[T]he application of section 363(b) must be supported by ‘some articulated business justification, other than appeasement of a major creditor and that ‘a judge determining a §363(b) application [must] expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.’

In re Lionel Corp., 722 F.2d 1063, 1072 (2d Cir. 1983); *see also In re Borders Group, Inc.*, 2011 WL 1795604 (Bankr.S.D.N.Y. 2011).

In the instant case, the sale of the Debtor’s property maximizes the benefit to the bankruptcy estate by releasing the debtor from their financial obligation to continue to pay monthly mortgage payments, as this sale will enable the Debtor to pay her outstanding mortgage in full, and to pay the plan in full. Thus, the debtor has exercised good business judgment in making the sale and maximizing the benefit to the estate’s creditors.

Accordingly, this Court should approve the sale of the residence by the Debtor under Section 363(b)(1) of the United States Bankruptcy Code.

WHEREFORE, the Debtor respectfully request the entry of an Order authorizing the Debtor to sell her right, title, and interest in and to her residential real property located at 31 Meyer Road, Livingston Manor, Sullivan County, NY 12758; for Special Counsel Martin S. Miller, Esq. to conduct the closing and, from the proceeds of closing pay, in addition to the usual items necessary to transfer title, his attorney’s fee in the amount of \$2,800.00, and to pay the

Special Counsel Broker's fee in the amount of \$21,000.00, and for such other and further relief as to the Court may seem just and proper.

Dated: Monticello, New York
October 19, 2022

LAW OFFICE OF RICHARD SCOTT ZIRT
Attorney for the Debtor

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